

WESTERN DISTRICT OF TN

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

FILED IN OPEN COURT:

DATE 11-14-17

TIME: 3:34 pm

INITIALS: ea

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MICHAEL BRILEY

Defendant.

Cr. No. 1:17-10097

PLEA AGREEMENT

Come now the parties herein, the defendant, JOHN MICHAEL BRILEY, being represented by counsel, WILLIAM MASSEY, and the United States, being represented by MATTHEW WILSON, Assistant United States Attorney for the Western District of Tennessee and hereby agree as follows:

1. The following plea agreement constitutes the entire agreement between the parties, and the parties agree that any issues not specifically addressed by this plea agreement shall be resolved by the Court in accordance with the applicable statutes, guidelines, rules and case law.
2. The defendant agrees to plead guilty to Count 1 of the Information. If the defendant continues in his plea of guilty, at the time of his sentencing, the Government will move to dismiss the Superseding Indictment in Case Number 1:15CR10046. At the time of his sentencing, the Government will move to dismiss the remaining counts. The defendant will pay the \$100.00 special assessment prior to sentencing.

AGREEMENT REGARDING RELEVANT CONDUCT

3. This plea is being made pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. For the purposes of this agreement, the parties agree for

sentencing purposes, that the appropriate loss amount under U.S.S.G. § 2B1.1(b)(1)(B) is more than \$6,500, but less than \$15,000. If the Court should not accept this amount, then the defendant will be allowed to withdraw his plea, and the Government will be released from the terms of this agreement.

BREACH OF PLEA AGREEMENT BY THE DEFENDANT

4. Should it be judged by the Government that the defendant has committed or attempted to commit any additional crimes or has engaged in any conduct constituting, obstructing or impeding justice within the meaning of United States Sentencing Guidelines Section 3C1.1 or has failed to make any court appearances in this case, from the date of the defendant's signing of this plea agreement to the date of the defendant's sentencing, or if the defendant attempts to withdraw his plea, the Government will be released from its obligations, and would become free to argue for any sentence within statutory limits. Such a breach by the defendant would not release the defendant from this plea of guilty.

CONCESSIONS BY THE GOVERNMENT

5. The Government agrees to recommend a sentence within the United States Sentencing Guidelines as determined by the Court.

6. The Government agrees not to object to a recommendation by the probation office or a ruling of the court which awards the defendant an appropriate-level decrease in the base offense level for acceptance of responsibility. If the offense level in the Presentence Report is 16 or greater and the court accepts a recommendation in the

Presentence Report that defendant receive two points for acceptance of responsibility, the United States agrees to move for an additional one-point reduction for acceptance of responsibility for a total of three points. However, the Government will not be obligated to move for an additional one-point reduction or recommend any adjustment for acceptance of responsibility if defendant engages in conduct inconsistent with acceptance of responsibility including, but not limited to, the following a) falsely denies, or makes a statement materially inconsistent with, the factual basis set forth in this agreement, b) falsely denies additional relevant conduct in the offense, c) is untruthful with the Government, the Court or probation officer, or d) materially breaches this plea agreement in any way.

CONCESSIONS BY THE DEFENDANT

7. The defendant agrees to pay \$7,844.72 to Medicare, TennCare and TriCare as restitution in this case.

8. The defendant is aware that 18 U.S.C. § 3742 affords him the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by 18 U.S.C. § 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However,

if the United States appeals the defendant's sentence pursuant to 18 U.S.C. § 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with the United States, to request that the district court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

AGREEMENT DOES NOT PROMISE A SPECIFIC SENTENCE


9. The defendant understands and agrees that the Court will make the final determination of facts as to any sentence and as to any mitigating or aggravating factors concerning the sentence to be imposed, other than the agreement in Paragraph 3. Adverse rulings by the Court shall not be grounds for the withdrawal of the defendant's guilty plea or to appeal any sentence imposed. The Court is not limited to consideration of the facts and events provided by the Government.


PLEA AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT

10. There are no other agreements between and among the parties to this agreement. The defendant is satisfied that all acts and/or any omissions of counsel for the defense have been the result of reasonable professional judgment and that defendant has been provided adequate legal representation in this case. The defendant enters this agreement freely, knowingly, and voluntarily, and upon the advice of counsel.

Respectfully submitted,

D. MICHAEL DUNAVANT
United States Attorney


LORNA MCCLUSKY
Counsel for the Defendant


MATTHEW WILSON
Assistant U.S. Attorney
109 South Highland, Suite 300
Jackson, Tennessee 38301
(731) 422 6220


JOHN MICHAEL BRILEY
Defendant

Date 11/14/17